

AMENDED IN SENATE MARCH 24, 2010

**SENATE BILL**

**No. 1195**

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**Introduced by Senator Wyland**

February 18, 2010

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~~An act to amend Section 21004 of the Public Resources Code, relating to the environment. An act to amend Section 288 of the Penal Code, relating to sex offenders.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Wyland. ~~Environment: CEQA.~~ *Sex offenders: lewd and lascivious acts.*

*Existing law makes it a felony punishable by imprisonment in the state prison for 3, 6, or 8 years for any person to willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.*

*This bill would instead make the crime above punishable by imprisonment in the state prison for 10 years to life.*

~~The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would~~

avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

~~This bill would make technical, nonsubstantive changes to CEQA.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 288 of the Penal Code is amended to*  
2     *read:*

3     288. (a) Any person who willfully and lewdly commits any  
4     lewd or lascivious act, including any of the acts constituting other  
5     crimes provided for in Part 1, upon or with the body, or any part  
6     or member thereof, of a child who is under the age of 14 years,  
7     with the intent of arousing, appealing to, or gratifying the lust,  
8     passions, or sexual desires of that person or the child, is guilty of  
9     a felony and shall be punished by imprisonment in the state prison  
10    for three, six, or eight years.

11    (b) (1) Any person who commits an act described in subdivision  
12    (a) by use of force, violence, duress, menace, or fear of immediate  
13    and unlawful bodily injury on the victim or another person, is  
14    guilty of a felony and shall be punished by imprisonment in the  
15    state prison for ~~three, six, or eight years~~ *10 years to life*.

16    (2) Any person who is a caretaker and commits an act described  
17    in subdivision (a) upon a dependent person by use of force,  
18    violence, duress, menace, or fear of immediate and unlawful bodily  
19    injury on the victim or another person, with the intent described  
20    in subdivision (a), is guilty of a felony and shall be punished by  
21    imprisonment in the state prison for three, six, or eight years.

22    (c) (1) Any person who commits an act described in subdivision  
23    (a) with the intent described in that subdivision, and the victim is  
24    a child of 14 or 15 years, and that person is at least 10 years older  
25    than the child, is guilty of a public offense and shall be punished  
26    by imprisonment in the state prison for one, two, or three years,  
27    or by imprisonment in a county jail for not more than one year. In  
28    determining whether the person is at least 10 years older than the  
29    child, the difference in age shall be measured from the birth date  
30    of the person to the birth date of the child.

1 (2) Any person who is a caretaker and commits an act described  
2 in subdivision (a) upon a dependent person, with the intent  
3 described in subdivision (a), is guilty of a public offense and shall  
4 be punished by imprisonment in the state prison for one, two, or  
5 three years, or by imprisonment in a county jail for not more than  
6 one year.

7 (d) In any arrest or prosecution under this section or Section  
8 288.5, the peace officer, district attorney, and the court shall  
9 consider the needs of the child victim or dependent person and  
10 shall do whatever is necessary, within existing budgetary resources,  
11 and constitutionally permissible to prevent psychological harm to  
12 the child victim or to prevent psychological harm to the dependent  
13 person victim resulting from participation in the court process.

14 (e) Upon the conviction of any person for a violation of  
15 subdivision (a) or (b), the court may, in addition to any other  
16 penalty or fine imposed, order the defendant to pay an additional  
17 fine not to exceed ten thousand dollars (\$10,000). In setting the  
18 amount of the fine, the court shall consider any relevant factors,  
19 including, but not limited to, the seriousness and gravity of the  
20 offense, the circumstances of its commission, whether the  
21 defendant derived any economic gain as a result of the crime, and  
22 the extent to which the victim suffered economic losses as a result  
23 of the crime. Every fine imposed and collected under this section  
24 shall be deposited in the Victim-Witness Assistance Fund to be  
25 available for appropriation to fund child sexual exploitation and  
26 child sexual abuse victim counseling centers and prevention  
27 programs pursuant to Section 13837.

28 If the court orders a fine imposed pursuant to this subdivision,  
29 the actual administrative cost of collecting that fine, not to exceed  
30 2 percent of the total amount paid, may be paid into the general  
31 fund of the county treasury for the use and benefit of the county.

32 (f) For purposes of paragraph (2) of subdivision (b) and  
33 paragraph (2) of subdivision (c), the following definitions apply:

34 (1) "Caretaker" means an owner, operator, administrator,  
35 employee, independent contractor, agent, or volunteer of any of  
36 the following public or private facilities when the facilities provide  
37 care for elder or dependent persons:

38 (A) Twenty-four hour health facilities, as defined in Sections  
39 1250, 1250.2, and 1250.3 of the Health and Safety Code.

40 (B) Clinics.

- 1 (C) Home health agencies.
- 2 (D) Adult day health care centers.
- 3 (E) Secondary schools that serve dependent persons and
- 4 postsecondary educational institutions that serve dependent persons
- 5 or elders.
- 6 (F) Sheltered workshops.
- 7 (G) Camps.
- 8 (H) Community care facilities, as defined by Section 1402 of
- 9 the Health and Safety Code, and residential care facilities for the
- 10 elderly, as defined in Section 1569.2 of the Health and Safety
- 11 Code.
- 12 (I) Respite care facilities.
- 13 (J) Foster homes.
- 14 (K) Regional centers for persons with developmental disabilities.
- 15 (L) A home health agency licensed in accordance with Chapter
- 16 8 (commencing with Section 1725) of Division 2 of the Health
- 17 and Safety Code.
- 18 (M) An agency that supplies in-home supportive services.
- 19 (N) Board and care facilities.
- 20 (O) Any other protective or public assistance agency that
- 21 provides health services or social services to elder or dependent
- 22 persons, including, but not limited to, in-home supportive services,
- 23 as defined in Section 14005.14 of the Welfare and Institutions
- 24 Code.
- 25 (P) Private residences.
- 26 (2) “Board and care facilities” means licensed or unlicensed
- 27 facilities that provide assistance with one or more of the following
- 28 activities:
- 29 (A) Bathing.
- 30 (B) Dressing.
- 31 (C) Grooming.
- 32 (D) Medication storage.
- 33 (E) Medical dispensation.
- 34 (F) Money management.
- 35 (3) “Dependent person” means any person who has a physical
- 36 or mental impairment that substantially restricts his or her ability
- 37 to carry out normal activities or to protect his or her rights,
- 38 including, but not limited to, persons who have physical or
- 39 developmental disabilities or whose physical or mental abilities
- 40 have significantly diminished because of age. “Dependent person”

1 includes any person who is admitted as an inpatient to a 24-hour  
2 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of  
3 the Health and Safety Code.

4 (g) Paragraph (2) of subdivision (b) and paragraph (2) of  
5 subdivision (c) apply to the owners, operators, administrators,  
6 employees, independent contractors, agents, or volunteers working  
7 at these public or private facilities and only to the extent that the  
8 individuals personally commit, conspire, aid, abet, or facilitate any  
9 act prohibited by paragraph (2) of subdivision (b) and paragraph  
10 (2) of subdivision (c).

11 (h) Paragraph (2) of subdivision (b) and paragraph (2) of  
12 subdivision (c) do not apply to a caretaker who is a spouse of, or  
13 who is in an equivalent domestic relationship with, the dependent  
14 person under care.

15 ~~SECTION 1. Section 21004 of the Public Resources Code is~~  
16 ~~amended to read:~~

17 ~~21004. In mitigating or avoiding a significant effect of a project~~  
18 ~~on the environment, a public agency may only exercise those~~  
19 ~~express or implied powers provided by law other than this division.~~  
20 ~~However, a public agency may use discretionary powers provided~~  
21 ~~by other law for the purpose of mitigating or avoiding a significant~~  
22 ~~effect on the environment subject to the express or implied~~  
23 ~~constraints or limitations that may be provided by law.~~